

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

BAMEYI KELVIN OMALE,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

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1:23-CV-581-RP
[1:19-CR-78-RP-1]

ORDER

Before the Court is Petitioner Bameyi Kelvin Omale’s (“Omale”) Motion Under 28 U.S.C. § 2255 to Vacate, Set Aside, or Correct Sentence by a Person in Federal Custody. (Dkt. 244). Omale filed his motion on May 15, 2023. (*Id.*). The case was referred to United States Magistrate Judge Mark Lane for findings and recommendations, pursuant to 28 U.S.C. § 636(b). Judge Lane filed his report and recommendation on February 7, 2024. (Dkt. 251). In his report and recommendation, Judge Lane recommends that the Court dismiss Omale’s motion because “Omale . . . cannot show he was prejudiced by counsel’s failure to argue *Kisor*’s application because the Fifth Circuit later rejected that same argument” and “counsel is not required to anticipate subsequent developments in the law in order to render effective assistance.” (*Id.* at 5–6). The Clerk of the Court mailed a copy of Judge Lane’s report and recommendation to Omale on February 7, 2024, (Dkt. 252), and the mailing was signed for on February 16, 2024, (Dkt. 253). However, the Court later received the mailing with an indication that Omale had not received it. The Court then again mailed a copy of Judge Lane’s report and recommendation to Omale on April 3, 2024. (Dkt. 255). Again, the mailing was signed for at Omale’s mailing address, (Dkt. 256), but then returned to the Court with an indication that Omale is no longer at his listed address. It is a petitioner’s responsibility to ensure that he updates

his address with the Court. As of the date of this order, Omale has not filed any objections to the report and recommendation.

A party may serve and file specific, written objections to a magistrate judge's findings and recommendations within fourteen days after being served with a copy of the report and recommendation and, in doing so, secure *de novo* review by the district court. 28 U.S.C. § 636(b)(1)(C). When no objections are timely filed, a district court can review the magistrate's report and recommendation for clear error. *See* Fed. R. Civ. P. 72 advisory committee's note ("When no timely objection is filed, the [district] court need only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation."). Because no party has filed timely objections, the Court reviews the report and recommendation for clear error. Having done so and finding no clear error, the Court accepts and adopts the report and recommendation as its own order.

Accordingly, **IT IS ORDERED** that the report and recommendation of United States Magistrate Judge Mark Lane, (Dkt. 251), is **ADOPTED**. Omale's Motion Under 28 U.S.C. § 2255 to Vacate, Set Aside or Correct Sentence by a Person in Federal Custody, (Dkt. 244), is **DISMISSED** for the reasons given in the report and recommendation.

It is **FURTHER ORDERED** that a certificate of appealability is **DENIED**.

SIGNED on May 16, 2024.



ROBERT PITMAN
UNITED STATES DISTRICT JUDGE